



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket No. 16-306, GN Docket No. 12-268; DA 17-34]**

**Media Bureau Seeks Comment on Requiring the Filing of Transition Progress Reports by Stations that are Not Eligible for Reimbursement from the TV Broadcast Relocation Fund**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** In this document, the Federal Communications Commission seeks comment on a proposed Transition Progress Report (FCC Form 2100 – Schedule 387 (Transition Progress Report)) and proposed filing requirements for periodic progress reports by full power and Class A television stations that are not eligible to receive payment of relocation expenses from the TV Broadcast Relocation Fund in connection with their being assigned to a new channel through the Incentive Auction. The Commission tentatively concludes that this mechanism is needed to help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to monitor the construction of the stations that are not eligible for reimbursement.

**DATES:** Comments due on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; and reply comments are due on or before **[INSERT DATE 25 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by GN Docket No. 12–268 and MB Docket No. 16-306, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <https://www.fcc.gov/>. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov), (202) 418-1647.

**SUPPLEMENTARY INFORMATION:** In the Incentive Auction R&O, the Commission adopted

rules and procedures for conducting the broadcast television incentive auction. See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Report and Order, 79 FR 48442, August 15, 2014. The incentive auction is composed of a reverse auction in which broadcasters offer to voluntarily relinquish some or all of their spectrum usage rights, and a forward auction of new, flexible-use licenses suitable for providing mobile broadband services. The reverse auction incorporates a repacking process to reorganize the broadcast television bands so that the television stations that remain on the air after the transition will occupy a smaller portion of the ultra-high frequency (UHF) band, thereby clearing contiguous spectrum that will be repurposed as the 600 MHz Band for flexible wireless use. After bidding concludes, the Media and Wireless Telecommunications Bureaus will release the Closing and Reassignment Public Notice which, among other things, will announce the results of the repacking process and identify the channel reassignments of television channels. The Closing and Reassignment Public Notice will also establish the beginning of the 39-month post-auction transition period (transition period). By the end of the transition period, all stations reassigned to new channels must complete construction of their post-auction channel facilities, commence operation on their post-auction channel, cease operation on their pre-auction channel, and file a license application.

Most stations that incur costs as a result of being reassigned to new channels will be eligible for reimbursement from the Reimbursement Fund and the Commission determined in the Incentive Auction R&O, that reimbursable stations will be required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of their construction is complete. In this document the Bureau announces that each full power and Class A television station that is eligible for reimbursement of its relocation

costs from the TV Broadcast Relocation Fund established by the Middle Class Tax Relief and Job Creation Act of 2012 must periodically file an FCC Form 2100 – Schedule 387 (Transition Progress Report) that is attached as Appendix A to the Public Notice. The appendix is available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-17-34A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-17-34A1.pdf). Reimbursable stations must file Transition Progress Reports using the Commission’s electronic filing system starting with first full calendar quarter after completion of the Incentive Auction and on a quarterly basis thereafter. In addition to these quarterly reports, reimbursable stations must file the reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. Once a station has filed Transition Progress Reports certifying that it has completed all work related to construction of its post-auction facilities and has ceased operating on its pre-auction channel, it will no longer be required to file reports.

Other stations that will be relocating to new channels are not eligible for reimbursement, including stations with a winning reverse auction bid to move to the low or high very-high frequency (VHF) band, stations requesting a waiver of the Commission’s service rules in lieu of reimbursement, and a small number of Class A stations that may be displaced as a result of repacking. This document tentatively concludes that a similar mechanism is needed to help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to monitor the construction of the stations that are not eligible for reimbursement, and seeks comment on the Transition Progress Report as it relates to non-reimbursable stations, including whether the same questions asked of reimbursable stations should be asked of non-reimbursable stations, or whether different filing intervals or different filing requirements would be advisable.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, the general public and the Office of Management and Budget (OMB) are invited to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13, see 44 U.S.C. 3507.

Initial Regulatory Flexibility Act Analysis: As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”) the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities of the policies and rules proposed in the this PN (Progress Report Form PN). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the Progress Report Form PN. The Commission will send a copy of the Progress Report Form PN, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”). In addition, the Progress Report Form PN and IRFA (or summaries thereof) will be published in the Federal Register.

The Regulatory Flexibility Act of 1980, as amended (“RFA”), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one

which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

**A. Need for, and Objectives of, the Proposed Rule Changes**

The Federal Communications Commission (Commission) adopted a 39-month transition period during which television stations that are assigned to new channels in the incentive auction must construct their new facilities. The Commission determined that reassigned television stations that are eligible for reimbursement from the TV Broadcast Relocation Fund are required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of construction is complete. The Commission directed the Media Bureau (Bureau) to develop a form for such progress reports and set the filing deadlines for such reports. The Progress Report Form PN describes the information that must be provided by these stations, and when and how the progress reports must be filed.

The Bureau proposes to require that reassigned television stations that are not eligible for reimbursement from the TV Broadcast Relocation Fund provide the same progress reports to the Commission on the same schedule as that specified for stations eligible for reimbursement. The Transition Progress Report in Appendix A requires reassigned stations to certify that certain steps toward construction of their post-auction channel either have been completed or are not required, and to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. The information in the progress reports will be used by the Commission, stations, and other interested parties to monitor the status of reassigned stations' construction during the 39-month transition period.

**B. Legal Basis**

The proposed action is authorized pursuant to sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 403.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This economic census category “comprises establishments primarily engaged in broadcasting images together with sound.” The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of \$25,000,000 or less, and 99 had annual receipts of more than \$25,000,000. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,386 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

Class A TV Stations. The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts. The Commission has estimated the number of licensed Class A television stations to be 418. Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance**



## **Requirements**

The Bureau proposes that reassigned stations that are not eligible for reimbursement file the Transition Progress Report in Appendix A on a quarterly basis, beginning for the first full quarter after the release of a public notice announcing the completion of the incentive auction, as well as 10 weeks before their construction deadline, 10 days after they complete construction of their post-auction facility, and five days after they cease broadcasting on their pre-auction channel. Once a station has ceased operating on its pre-auction channel, it would no longer need to file reports. We seek comment on the possible burdens the reporting requirement would place on small entities. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of the proposed reporting requirement.

### **E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In general, alternatives to proposed rules or policies are discussed only when those rules pose a significant adverse economic impact on small entities. We believe the burdens of the proposed reporting requirement are minimal and, in any event, are outweighed by the potential benefits of allowing for monitoring of the post-auction transition. In particular, the intent is to allow the Commission, broadcasters, and other interested parties to more closely monitor that

status of construction during the transition, and focus resources on ensuring successful completion of the transition by all reassigned stations and continuity of over-the-air television service. Although the proposal to require reassigned stations that are not eligible for reimbursement to file regular progress reports during the transition may impose additional burdens on these stations, we believe the benefits of the proposal (such as further facilitating the successful post-incentive auction transition) outweigh any burdens associated with compliance

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

None.

FEDERAL COMMUNICATIONS COMMISSION.

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